# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

CASINO ONE CORPORATION D/B/A LUMIÉRE PLACE CASINO & HOTELS AND PNK (ES), LLC D/B/A HOTELUMIÉRE, A SINGLE EMPLOYER

and Cases 14-CA-090353

14-CA-093279

**UNITE HERE, LOCAL 74** 

14-CA-095776 14-CA-099773

## **DECISION AND ORDER**

### **Statement of the Cases**

On June 13, 2013, Casino One Corporation d/b/a Lumiére Place Casino & Hotels and PNK (ES), LLC d/b/a HoteLumiére (the Respondent), Unite Here, Local 74 (the Union), and the Acting General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

## **Findings of Fact**

## 1. The Respondent's business

Casino One Corporation d/b/a Lumiére Place Casino (Lumiére Casino) is a corporation which operates a casino and restaurants at 999 N. 2nd Street, St. Louis, Missouri (Lumiére Place). PNK (ES), LLC d/b/a HoteLumiére (HoteLumiére) is a limited liability company which operates a hotel and restaurants at Lumiére Place. Lumiére Casino and HoteLumiére are jointly referred to herein as the Respondent.

At all material times, HoteLumiére has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

## 2. The labor organization involved

At all material times, UNITE HERE, Local 74 (the Union) has been a labor organization within the meaning of Section 2(5) of the Act.

#### 3. The unit

The following employees of Lumiére Casino constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All regular full-time and regular part-time food and beverage, casino cashiering (change persons/slot attendants, booth cashiers, carousel attendants, hard and soft count), cleaning, groundskeeping, shipping and receiving, parking and transportation employees, and slot technicians employed by Lumiére Casino at its 999 N. 2nd Street, St. Louis, Missouri facility, EXCLUDING all other employees and all managers, guards and supervisors as defined in the Act.

Between about April 2008 and November 2008, a majority of the unit designated and selected the Union as their representative for purposes of collective-bargaining with Lumiére Casino.

On November 20, 2008, Lumiére Casino, through its parent corporation Pinnacle Entertainment, Inc., voluntarily recognized the Union as the exclusive collective-bargaining representative of the unit.

On February 27, 2009, a representation election was conducted among the employees in the unit and, on March 18, 2009, the Union was certified as the exclusive collective-bargaining representative of the unit.

At all times since November 20, 2008, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

#### ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that

The Respondent, Lumiére Casino and HoteLumiére, St. Louis, Missouri, its officers, agents, successors, and assigns shall

#### 1. Cease and desist from

- (a) Directing employees to cease engaging in union activities and threatening them with unspecified reprisals if they join or assist the Union.
- (b) Accusing employees of being disloyal because they engage in union activities and threatening employees with unspecified reprisals for engaging in union activities.
- (c) In response to employees' union activities, threatening to restrict employees' access to HoteLumiére's kitchen and the area near the kitchen.
- (d) In response to employees' union activities, advising employees that they are prohibited from going into HoteLumiére's kitchen, or the area near the kitchen, and from talking to other employees while they were on the clock.
- (e) Promulgating a rule stating "[D]o not enter the kitchen, banquet area, or it's [sic] perimeter at any time" to discourage its employees from forming, joining, or assisting the Union or engaging in other concerted activities.
- (f) Enforcing a rule stating "[D]o not enter the kitchen, banquet area, or it's [sic] perimeter at any time" selectively and disparately by applying it only against employees who formed, joined, or assisted the Union.
- (g) Accusing an employee of being disloyal because the employee engaged in union activities and threatening the employee with unspecified reprisals should that employee engage in future union activity.
  - (h) Issuing discipline to employees because they joined or assisted the Union.
  - (i) Terminating employees because they joined or assisted the Union.
- (j) Issuing discipline to employees because they gave testimony to the Board in the form of an affidavit and/or were the subject of unfair labor practice charges filed by the Union.
- (k) Terminating employees because they gave testimony to the Board in the form of an affidavit and/or were the subject of unfair labor practice charges filed by the Union.
- (I) Failing and refusing to bargain in good faith with the Union as the exclusive representative of the unit by: (1) unreasonably delaying in providing information requested by the Union, that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative; (2) making changes to terms and conditions of employment of unit employees, without first notifying the Union, and affording the Union an opportunity to bargain over the conduct, including but not limited to changing its practices regarding the posting of open cocktail server shifts; changing its practices regarding the assignment of overtime by failing to first offer available bartender shifts to bartenders who would not go into overtime and then to bartenders who would go into overtime; posting and maintaining a written policy which

prohibits the assignment of open cocktail server shifts to cocktail servers who will go into overtime if they worked the shift; and placing a cap on VIP servers' wages; and (3) bypassing the Union and engaging in direct dealing with unit employees.

- (m) In any other manner interfering with, restraining or coercing its employees in the exercise of their right to self organization, to form labor organizations, to join or assist UNITE HERE, Local 74 or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) The Respondent has rescinded the memorandum to employees that it posted on about November 1, 2012, which contained the following rule: "[D]o not enter the kitchen, banquet area, or it's [sic] perimeter at any time." The Respondent will not rely on the policies contained in that memorandum for the issuance of any discipline to unit employees.
- (b) The Respondent has removed from its files the disciplinary notice issued to Paula Ballew on September 22, 2012, as well as any reference to that discipline, and has notified her in writing that this has been done and that the discipline will not be used against her in any way.
- (c) The Respondent has removed from its files the disciplinary notices issued to Stephanie Griffin on November 1, 2012 and January 25, 2013, as well as any reference to that discipline, and it has notified her in writing that this has been done and that the discipline will not be used against her in any way.
- (d) On April 30, 2013, the Respondent reinstated Cardell Hester to his former job without prejudice to his seniority or any other rights or privileges previously enjoyed.
- (e) The Respondent has removed from its files the suspension pending discharge/discharge notice issued to Cardell Hester on November 29, 2012, as well as any reference to that suspension pending termination/discharge, and notified him in writing that this has been done and that the discharge will not be used against him in any way.
- (f) By June 21, 2013, the Respondent will make whole Cardell Hester by payment to him of \$22,142 for the loss of pay and benefits he has suffered by reason of his termination. The Respondent will file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarter for Cardell Hester.
- (g) The Respondent will timely provide information requested by the Union that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. The Respondent has provided the

Union with the information it requested on July 25, 2012, concerning its future plans for the Burger Bar and the impact those plans would have on unit employees.

(h) The Respondent has restored and the Respondent will continue the manner in which it posts open cocktail server shifts by posting all open shifts so that servers can sign up to work those shifts. The Respondent will file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarter for each of the employees listed below. By June 21, 2013, the Respondent will make whole the following employees for any loss of pay and benefits they have suffered by reason of the Respondent's failure to post all open cocktail server shifts by payment to them of the amounts set forth opposite their respective names:

Bailey, Gail	\$382.45
Ballew, Paula	\$286.84
Barksdale, Darrell	\$95.62
	\$478.07
Bartlett, Chiquita	
Becker, Ashley	\$382.45
Belcher, Josh	\$286.84
Berry, Candace	\$478.07
Campbell, Alicia	\$95.62
Cardwell, Ashley	\$382.45
Carpenter, Jamie	\$286.84
Carroll, Alla	\$669.29
Cherry, Jennifer	\$191.23
Christison, Oliva	\$382.45
Cunningham, Meghan	\$286.84
Donovan, Danica	\$956.13
Gehris, Laken	\$478.07
Gordon, Jasmine	\$95.62
Killings, Ericka	\$478.07
Parks, Vanity	\$95.62
Parsons, Chris	\$669.29
Roles, Kari	\$95.62
Simmons, Angela	\$669.29
Sirtak, Natalie	\$95.62
Somraty, Melissa	\$1,529.82
Stuerman, Leticia	\$573.69
Thakar, Kruttie	\$382.45
Thompson, Ashley	\$286.84
Turner, Andrea	\$191.23
Vancil, Dawn	\$286.84
Yontrakarn, Mercedi	\$764.90

(i) The Respondent has restored and the Respondent will continue posting open cocktail server shifts and allowing cocktail servers to work those shifts even if the shifts put them into overtime.

- (j) The Respondent has restored and the Respondent will continue offering available bartender shifts first to bartenders who will not go into overtime and then to bartenders who will go into overtime.
- (k) The Respondent has rescinded the wage cap placed on VIP servers' wages. By June 21, 2013, the Respondent will make whole Olivia Lemanski by payment to her of \$150.82 for the loss of pay and benefits she suffered by reason of the Respondent's implementation of a wage cap on VIP servers' wages. The Respondent will file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarter for Olivia Lemanski.
- (I) Within 14 days of service by the Region, post at its St. Louis, Missouri facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically on the kiosks in Lumiére Place and posted on the Respondent's intranet. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to Employees to all current employees and former employees employed by the Respondent at any time since July 1, 2012. Further, within 14 days of the Board's Order, the Respondent will read the Notice to Employees to unit employees during working time.
- (m) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., September 11, 2013.

Chairman
Member
Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

#### **APPENDIX**

#### **NOTICE TO EMPLOYEES**

# Posted by Order of the National Labor Relations Board An Agency of the United States Government

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS

#### FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union; Choose a representative to bargain with employers on your behalf; Act together with other employees for your benefit and protection; Choose not to engage in any of these protected activities.

Accordingly, we give you our assurances that:

**WE WILL NOT** direct employees to cease engaging in union activities and/or accuse employees of being disloyal because they engage in union activities or threaten employees with unspecified reprisals for engaging in union activities.

**WE WILL NOT**, in response to employees' union activities, threaten or restrict employees' access to HoteLumiére's kitchen and the area near the kitchen; and/or in response to employees' union activities, prohibit employees from talking to other employees while they are not on the clock; promulgate a rule stating, "[D]o not enter the kitchen, banquet area, or it's [sic] perimeter at any time" to discourage our employees from forming, joining, or assisting a union or engaging in other concerted activities; nor will we selectively and disparately enforce this rule by applying it only against employees who form, join, or assist a union.

**WE WILL NOT** issue discipline or terminate employees because they join and/or assist a union or engage in protected concerted activities or because they provide testimony to the National Labor Relations Board.

**WE WILL NOT** unreasonably delay in providing information requested by the Union that is necessary for, and relevant to, the performance of its duties as the exclusive collective-bargaining representative.

**WE WILL NOT** change unit employees' terms and conditions of employment without first notifying the Union and affording the Union an opportunity to bargain over the conduct.

**WE WILL NOT** bypass the Union and engage in direct dealing with unit employees;

**WE WILL NOT** in any other manner interfere with your rights under Section 7 of the Act.

**WE WILL** timely provide information requested by the Union that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

**WE HAVE REINSTATED** Cardell Hester to his former job. **WE HAVE** restored all rights or privileges previously enjoyed by Cardell Hester and **WE HAVE** removed all references to his termination from [our] personnel files and advised him in writing that this has been done. **WE WILL** make whole Cardell Hester for any loss of earnings and other benefits resulting from his termination.

**WE HAVE** removed the disciplinary notices issued to Paula Bellew on September 22, 2012, and Stephanie Griffin on November 1, 2012 and January 25, 2013, from our files as well as any reference to that discipline, and notified them in writing that this has been done and that the discipline will not be used against them in any way.

**WE HAVE** rescinded the cap on VIP servers' wages thus making them eligible for wage increases and **WE WILL** make whole all unit employees for any loss of earnings and other benefits resulting from the wage cap.

**WE HAVE** restored our practices of offering available bartender shifts first to bartenders who will not go into overtime and then to bartenders who will go into overtime and of posting all open cocktail server shifts, and allowing cocktail servers to work open shifts regardless of whether the shift will put them into overtime.

**WE WILL** make whole all unit employees for any loss of pay and benefits they have suffered by reason of our failing to post all open cocktail server shifts.

	CASINO ONE CORPORATION d/b/a Lumiére Place Casino & Hotels and PNK (ES), LLC d/b/a HOTELUMIÉRE
	(Employer)
Dated:	Ву:
<del></del>	(Representative) (Title)